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1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK  
3 -----x

4 UNITED STATES OF AMERICA,

5 v.

17 CR 548 (PAC)

6 JOSHUA ADAM SCHULTE,

7 Defendant.  
-----x

8 New York, N.Y.  
9 March 15, 2018  
10 11:07 a.m.

12 Before:

13 HON. PAUL A. CROTTY,

14 District Judge

15 APPEARANCES

16 JOON H. KIM,  
17 Acting United States Attorney for the  
18 Southern District of New York  
19 MATTHEW LAROCHE  
20 Assistant United States Attorney

21 JACOB KAPLAN  
22 SABRINA SHROFF  
23 Attorneys for Defendant

24 ALSO PRESENT: MICHAEL CHANG-FRIEDEN,  
25 Paralegal with Mr. Laroche

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1 (In open court)

2 (Case called)

3 MR. LAROCHE: Good morning, your Honor. Matt Laroche  
4 for the government. With me is Michael Chang-Frieden, a  
5 paralegal at the U.S. Attorney's Office.

6 THE COURT: Good morning.

7 MR. KAPLAN: Good morning, your Honor. Jacob Kaplan  
8 from Brafman and Associates on behalf of Mr. Schulte.

9 THE COURT: Good morning. Mr. Schulte, good morning.

10 Mr. Laroche, do you want to bring me up to date?

11 MR. LAROCHE: Yes, your Honor. We were last here on  
12 January 8th of this year. We did not set a schedule at that  
13 time because of a classified discovery issue.

14 THE COURT: Right.

15 MR. LAROCHE: As the Court may recall, there is a  
16 classified document that is on the computer -- desktop computer  
17 that contains the child pornography in this case. As a result,  
18 the FBI has made that computer available to defense counsel at  
19 the FBI's facility in a SCIF.

20 Unfortunately, defense counsel needs a security  
21 clearance to view that material, and although defense counsel  
22 has been going through that process, we understand that he  
23 submitted his complete application within the last few weeks.  
24 Unfortunately, we learned last night that that process is going  
25 to take, conservatively, about 90 more days. Bad news for the

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1 case.

2 I've spoken briefly with defense counsel before this  
3 appearance, and I understand that, based on that and some other  
4 things that are going on with the representation, that he has  
5 an application for the Court today.

6 THE COURT: Mr. Laroche, refresh my recollection.  
7 That was pretty much the story you gave me last time, except  
8 for the 90 days.

9 MR. LAROCHE: That's correct, your Honor.

10 THE COURT: I thought it was going to be finished in a  
11 week or two?

12 MR. LAROCHE: So we thought that there would be an  
13 interim clearance granted. Unfortunately, we were informed  
14 that that is not going to be granted in this case. The  
15 government does not have much insight into that decision-making  
16 process.

17 THE COURT: Who makes the decision?

18 MR. LAROCHE: So I believe that's security folks  
19 within the Department of Justice that work with a group of  
20 individuals who will make the security clearance determination.  
21 It's not up to, obviously, our office to make that  
22 determination. We just understand that, at least with the  
23 interim clearance, that has not been granted at this time, and  
24 that he'll have to go through the full process. And the  
25 typical time frame for the full process, after the full

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1 application was submitted, which was a couple of weeks ago,  
2 will be about 90 more days.

3 THE COURT: Well, let's assume the worst. What if the  
4 application is denied?

5 MR. LAROCHE: If the application is denied, then -- so  
6 he would need to get additional counsel to be able to review  
7 the classified discovery. The government was prepared today to  
8 propose to your Honor, and we have a list here of stand-in  
9 counsel. So in cases where counsel is obtaining a security  
10 clearance, we'd ask for the Court to appoint stand-in counsel  
11 who is already cleared and could review the classified  
12 materials.

13 I have that list here today, and I'm happy to provide  
14 it to the Court. However, it's my understanding, based on  
15 discussions with defense counsel, that he has a separate  
16 application. Either way, the government's position is that is  
17 stand-in counsel should be put in right now so we could get the  
18 case moving.

19 THE COURT: Mr. Kaplan?

20 MR. KAPLAN: Yes, your Honor. Mr. Schulte retained  
21 counsel even prior to his arrest and was funding this counsel  
22 through savings that he had. Unfortunately, in the past few  
23 weeks, Mr. Schulte and his father were defrauded in Texas, and  
24 the savings that he had has been taken. And, unfortunately, he  
25 does not have any money going forward to fund his defense,

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1 which is problematic, given that this case is going to require  
2 a series of experts to go through the computer-related  
3 information to determine where exactly the child pornography  
4 was located on the computer. And this expert would also have  
5 to have full clearance because they would only be able to view  
6 the computers with clearance at the FBI facility.

7 And given Mr. Schulte's inability to fund that going  
8 forward, as well as pay his current outstanding legal bills, I  
9 would ask to be relieved at this time. And, also, given the  
10 fact that I don't have clearance and won't have clearance for  
11 another three months, if I get clearance at all. In an effort  
12 not to delay the case further, I would ask that I be relieved.

13 THE COURT: Are any of the lawyers on your list,  
14 Mr. Laroche, CJA eligible?

15 MR. LAROCHE: Yes, your Honor. I believe that several  
16 on this list are, and I can provide it to the Court.

17 THE COURT: Let's see.

18 MR. LAROCHE: Yes, your Honor. I also know that  
19 Ms. Shroff is on the list, who is a Federal Defender, your  
20 Honor.

21 THE COURT: I don't recognize all the names, but I  
22 recognize many of them. They're all very talented. These are  
23 all CJA eligible?

24 MR. LAROCHE: I don't know that -- I could check on  
25 that, your Honor. I don't know that all of them are, but I do

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1 recognize -- for instance, I know that Andy Patel is. I  
2 believe Steve Zissou is.

3 THE COURT: Bobbi Sternheim is.

4 MR. LAROCHE: That's correct.

5 THE COURT: Steven Witzel is.

6 MR. LAROCHE: That's correct.

7 THE COURT: Ms. Shroff is over at the Federal  
8 Defenders.

9 MR. LAROCHE: That's correct, your Honor.

10 THE COURT: Ms. Dolan is the same.

11 What's the procedure now? If I relieve Mr. Kaplan, is  
12 it to go back to the magistrate judge to ask for the  
13 appointment of one of these attorneys?

14 MR. LAROCHE: Yes, your Honor. Your Honor could do  
15 that proceeding, or it could be referred to magistrate court.  
16 Either one would work in this case, your Honor.

17 THE COURT: All right. I think the magistrate's court  
18 is better equipped to deal with the lawyer and the assignment  
19 of lawyers. I mean, how would they select from this group?  
20 And this is, what, about 15 names?

21 MR. LAROCHE: I think it would be a question of  
22 availability, your Honor. For instance, typically, if we  
23 needed an appointed lawyer today, the Court would contact  
24 magistrate court --

25 THE COURT: No, if I need one today, I know what to

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1 do. I call and say, give me the on-duty attorney.

2 MR. LAROCHE: That's right. But in terms of how they  
3 pick, I think it's just closest to who's on duty. So if one of  
4 these was on duty today, they would be the attorney, and I  
5 think that's generally how the process goes.

6 THE COURT: David, do you want to call the on-duty  
7 attorney and see who's up next on this list?

8 And, Mr. Kaplan, you referred to having not only the  
9 attorney needs top secret clearance, but you would need an  
10 expert, as well?

11 MR. KAPLAN: Yes, your Honor. Part of the big issue I  
12 see in this case is going to be the location, the exact  
13 location of the child pornography on the computer, and how  
14 accessible it is, one, from the desktop and, two, from the  
15 servers that Mr. Schulte ran.

16 Given that the computers right now are only viewable  
17 in the FBI office because of the security issue, I'm assuming  
18 that any expert who's going to analyze the computer containing  
19 this information, will also need the same sort of clearance.

20 In addition to that, I believe there might be other  
21 sensitive information, not just pertaining to computers, but  
22 other discovery that we may be requesting as part of the search  
23 warrant -- Franks hearing challenging the search warrant; so I  
24 think there might be more clearance issues going forward.

25 THE COURT: Do you have a battery of qualified experts

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1 that the CJA lawyers can draw upon?

2 MR. LAROCHE: I do believe that some of them are  
3 already pre-qualified, and we can get that list to whoever is  
4 appointed counsel, your Honor.

5 (Pause)

6 THE COURT: We'll take a short recess.

7 (Recess)

8 THE COURT: Hello, Ms. Shroff. Thank you for coming.

9 MS. SHROFF: Good afternoon, your Honor.

10 THE COURT: Has Mr. Schulte signed his affidavit of  
11 need?

12 MS. SHROFF: He has, your Honor.

13 THE COURT: Do you swear to it, Mr. Schulte?

14 THE DEFENDANT: I'm sorry, your Honor?

15 THE COURT: Do you swear to it?

16 THE DEFENDANT: Yes.

17 THE COURT: All right. Mr. Kaplan, I'm going to  
18 relieve you now.

19 MR. KAPLAN: Thank you, your Honor.

20 THE COURT: Ms. Shroff, I'm going to appoint you to  
21 represent Mr. Schulte.

22 Mr. Kaplan, you'll have to cooperate with Ms. Shroff.

23 MR. KAPLAN: Yes. We're going to have some  
24 communication going forward, and I'll get her up to speed as  
25 soon as I can.

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1                   THE COURT: I've signed the affidavit.

2                   Ms. Shroff, how much time do you want?

3                   MS. SHROFF: Your Honor, I spoke with Mr. Laroche and  
4 Mr. Kaplan. This is what we'd like. I would like about 30  
5 days to sit down and talk with my client --

6                   THE COURT: Yes.

7                   MS. SHROFF: -- at least get partially up to speed.

8                   THE COURT: Yes.

9                   MS. SHROFF: They said that they aren't making  
10 decisions about which way the case is headed; so I'm hoping  
11 that they will have a better response for me in the next 30  
12 days. If not, if they don't have a response or a timetable by  
13 30 days, I'm going to ask the Court to enforce a timetable for  
14 the U.S. Attorney's Office.

15                   THE COURT: All right.

16                   MS. SHROFF: But at the very least, I would like 30  
17 days, and then we can come back and update the Court, or we can  
18 write in a letter and update the Court.

19                   THE COURT: I prefer we schedule a date for a Court  
20 appearance.

21                   MS. SHROFF: That's fine.

22                   THE COURT: If you want to change that to a letter  
23 update, that's fine. How about the week of April 16th?

24                   MS. SHROFF: That's fine.

25                   THE COURT: David?

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1                   THE DEPUTY CLERK: Conference set for Tuesday,  
2 April 17th at 11:30.

3                   THE COURT: Mr. Laroche?

4                   MR. LAROCHE: That's fine, your Honor. The government  
5 would also move to exclude time until the next conference, in  
6 the interest of justice under the Speedy Trial Act, so defense  
7 counsel, Ms. Shroff, can get up to date on the case, review  
8 discovery, and discuss next steps with government counsel.

9                   MS. SHROFF: That's fine, your Honor.

10                  THE COURT: For the reasons stated, the time between  
11 now and April 17th will be excluded. Those interests outweigh  
12 the interest of the public and the defendant in a speedy trial.

13                  Anything else to do today, Mr. Laroche?

14                  MR. LAROCHE: No, your Honor. Thank you.

15                  THE COURT: Ms. Shroff?

16                  MS. SHROFF: No. I'm sorry, I couldn't pick up the  
17 phone earlier. I was before Judge Netburn. I apologize.

18                  THE COURT: Well, that's Judge Netburn's problem,  
19 then. She has everybody busy all the time. Thank you very  
20 much.

21                  MS. SHROFF: Thank you, your Honor.

22                  MR. LAROCHE: Thank you, Judge.

23                  THE COURT: Thank you, Mr. Schulte.

24                  (Adjourned)